

**THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

RICKY VINCENT PENDLETON,

Plaintiff,

v.

Civil Action No. 2:22-cv-00178

BETSY JIVIDEN, et al.,

Defendants.

DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT

COMES NOW Defendants Betsy Jividen and C.J. Rider,¹ by counsel, Jodi Tyler, Assistant Attorney General, and pursuant to Rule 12(b)(6) of the *Federal Rules of Civil Procedure*, hereby moves this Court to enter an Order dismissing Plaintiff's Complaint.

Plaintiff's claims under the Religious Land Use and Institutionalized Persons Act (hereafter "RLUIPA") and the First Amendment Free Exercise Clause fail, because Plaintiff cannot prove that Defendants' alleged actions impose a "substantial burden" on his right to "exercise his religion." Courts have looked at this issue and already established that providing an inmate a vegetarian diet does not violate his ability or right to practice Islam. Because the RLUIPA is a more stringent standard, and case law is clear that if Plaintiff's claims fail under RLUIPA, his claims against Defendants' for alleged violations of his First Amendment rights must also fail.

Furthermore, Plaintiff's claims under First Amendment Establishment Clause also fail because Defendants are neither advancing nor inhibiting religion with their Religious Special Diet policy. Finally, Plaintiff's claims against Defendants for violations under the Equal Protection Clause of the Fourteenth Amendment must be dismissed because Plaintiff has failed to

¹ At the time of this filing, Defendant Donnie Ames, Superintendent of Mount Olive Correctional Center and Jail, had not yet been served with the Complaint.

demonstrate that he is intentionally being treated differently than similarly situated inmates. Said reasons are more fully presented in the contemporaneously filed Memorandum of Law in Support.

WHEREFORE, based upon the foregoing and the reasons asserted in the contemporaneously filed Memorandum of Law in Support, Defendants pray this Court will enter an Order dismissing Plaintiff's Complaint, as well as all other relief deemed just and proper.

Respectfully submitted,

BETSY JIVIDEN, *et al.*,
By counsel,

PATRICK MORRISEY
ATTORNEY GENERAL

/s/ Jodi Tyler

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CERTIFICATE OF SERVICE

I, Jodi Tyler, Assistant Attorney General and counsel for Defendants, do hereby certify that on June 8, 2022, I electronically filed the foregoing “Defendants’ Motion to Dismiss Plaintiff’s Complaint” with the Clerk of Court using the CM/ECF system. I also served a true and accurate signed copy of this document to Plaintiff, a non-ECF participant, with first-class postage prepaid to the following addresses:

Ricky Vincent Pendleton
OID #3572914
Mount Olive Correctional Complex
1 Mountainside Way
Mount Olive, WV 25185

/s/ Jodi Tyler

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